

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRD REGION**

DRAPER TRUCKING, LLC

Case No. 03-RD-177325

EMPLOYER

and

WILLIAM M. BREHM, JR.

PETITIONER

and

**INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 449**

INTERVENOR

DECISION AND ORDER

On June 1, 2016, William M. Brehm Jr. (Petitioner) filed a petition seeking to decertify the International Brotherhood of Teamsters, Local 449 (Union) as the exclusive collective-bargaining representative of the employees in the bargaining unit described below.¹ Petitioner identifies the unit as limited to a single-employer, Draper Trucking, LLC (Employer). The Union contends that the petition should be dismissed because the petitioned-for unit is not appropriate. Rather, it contends that the employees at issue are part of a multiemployer bargaining unit comprised of dump truck drivers employed by six different firms. It asserts that the only appropriate unit must include the drivers employed by all dump truck operators within the

¹ The parties stipulated that the bargaining unit (Unit) is comprised of:

Dump truck drivers; excluding mechanics, office clerical employees, guards, and professional employees and supervisors as defined in the Act.

multiemployer group.² The Employer contends, as does Petitioner, that it is not part of any multiemployer group and that a bargaining unit comprised of just its employees is appropriate. As discussed below, based on the record, and relevant Board law, I conclude that the Employer's employees are part of a multiemployer bargaining unit and that therefore, the unit sought by the Petitioner is not an appropriate unit. Accordingly, I shall dismiss the petition.

I. FACTS

The Employer operates a dump truck business that has contracts with construction companies to transport aggregates, such as stone, asphalt, and sand.³ The Employer has been party to a series of collective bargaining agreements with the Union for several decades. The most recent agreement to which the Employer was a party was effective from June 1, 2013 to May 31, 2016. The record reveals that five other dump truck operators: Pariso Trucking, Inc., B. Pariso Transport, Inc., AT&A Trucking,⁴ Iroquois Bar,⁵ and LCA Development, also have been party to the same agreement with the Union with the most recent also being effective from June 1, 2013 to May 31, 2016. Approximately 90 drivers are covered by a contract covering the Employer and the other five dump truck operators.

George Harrigan, the principal executive officer, secretary treasurer, and a business agent for the Union, has negotiated six collective-bargaining agreements with the dump truck operators over the past 18 years. According to the Harrigan, the six operators identified above have formed

² The parties stipulated there is no contract bar to this proceeding.

³ The Employer was formerly known as Howgen Transportation Co. The testimony concerning the nature of the Employer's operations establishes that the Employer is not engaged in the construction industry. The record reflects that the Employer delivers materials to construction jobsites, and does not perform on-site construction work. The Board has long held that such employers are not themselves construction industry employers. *See Teamsters Local 291 (Lone Star Industries)*, 291 NLRB 581, 584 (1988). Although no party has raised the issue, I note that as the Employer is not engaged in the construction industry, the presumptions that recognition is achieved via Section 8(f) of the Act and that a single-employer unit is appropriate do not apply here. *See John Deklewa & Sons*, 282 NLRB 1375, 1377-1378 (1987).

⁴ AT&A Trucking is also referred to as Tripi.

⁵ Iroquois Bar was formerly known as Oneida Trucking.

an informal association for the purposes of bargaining with the Union over those 18 years. Harrigan refers to the six operators as the “Dump Truck Operators Association,” or simply “the association.” The association does not have bylaws or dues. Harrigan testified that he is currently negotiating the seventh agreement with the dump truck operators, including the Employer.

The agreements with the six operators, all effective from June 1, 2013 to May 31, 2016, were identical, differing only in the signature block. Each of the six 2013 to 2016 agreements provide that, “[t]he term “Employer” shall be construed to mean the Company or Firm employing truck drivers.” Each agreement is titled “Agreement between Dump Truck Operators and Truck Driver Local Union No. 449 of Buffalo and Vicinity.” The names of the six separate companies are not indicated on the 2013-2016 agreements. The five prior sets of agreements previous were also identical.

In the prior six rounds of negotiations-the sixth being for the 2013 to 2016 period, the Union sent out notices to all six operators’ truck drivers announcing a general meeting in advance of negotiations. Harrigan solicited contract proposals from the general meeting and then sent letters to the operators presenting proposals and inviting them to negotiations. For the previous three sets of negotiations, not including those occurring in 2016, the operators appointed a single spokesperson, the late Louis Tripi, owner of AT&A Trucking, to negotiate with the Union.⁶ In these instances, Harrigan met and negotiated directly with Tripi. Once Harrigan and Tripi reached a tentative agreement, the Union presented the agreement to its membership from each of the operators and held a general ratification meeting at which the votes from all drivers were pooled. Once the agreement was ratified, Harrigan sent it out to each of the operators to sign and return.

⁶ Prior to the past three sets of negotiations, each operator attended negotiations instead of appointing a spokesperson.

Most recently, on April 1, 2016, the Union sent a notice to its members employed by all six operators announcing that there would be a contract proposal meeting on April 17, 2016. After the meeting, Harrigan combined the contract proposals from members into a single document. On May 18, 2016, a bargaining session was held which the Union, and representatives of the Employer, Pariso Trucking, Inc., LCA Development, Iroquois Bar, and AT&A Trucking were present. No representative of B. Pariso Transport, Inc. attended. The Union presented the contract proposals to the operators and the parties negotiated. Harrigan asked the operators if a spokesperson would be appointed for them and they responded that they would get back to the Union on that question. On June 7, 2016, Arnold Collier of Iroquois Bar conveyed the employer group's counter proposals to the Union by e-mail.

A second bargaining session was held on June 9, 2016 and all six employers were represented at the meeting. The parties exchanged counter proposals and the record is unclear about the status of negotiations at the conclusion of this meeting.

According to the Employer, prior to 1998, (perhaps in the 1970s and 1980s), bargaining was conducted on an individual basis and the Employer has never executed any document forming a bargaining association between it and any other operator. It acknowledges that there has been group bargaining since at least 1998, but asserts that it was done for convenience only and not to form a multiemployer unit. The Employer referred to the arrangement as a "multiemployer negotiating unit," but not as a multiemployer bargaining unit.⁷

II. ANALYSIS

If, as the Union argues, the Employer has manifested a willingness to be bound by group bargaining and the bargaining is comprised of all dump truck drivers employed by the six employers that constitute the informal "Dump Truck Operators", then the unit sought by the

⁷ The Employer and Petitioner did not call any witnesses or offer any exhibits at hearing.

Petitioner is not coextensive with the existing unit and the petition must be dismissed. In examining whether to process the petition, the sole issue presented is whether the petitioned-for unit is a single-employer unit comprised of dump truck drivers employed solely by the Employer, as argued by Petitioner and the Employer, or a multiemployer bargaining unit, as asserted by the Union.

Whether the appropriate unit is a single-employer unit or a multiemployer unit determines the appropriateness of processing the petition, as the unit set forth in a decertification petition must be coextensive with the previously existing appropriate unit. As the Board explained, in *Arrow Uniform Rental*, 300 NLRB 246 (1990):

It is well established that a decertification petition must be coextensive with the recognized or certified bargaining unit. Thus, as a general rule, a decertification petition for a single-facility location will be dismissed if that location's bargaining history has occurred within a *multilocation unit* of the employer's employees for more than a year.

Id. at 247. (Citations omitted).

See also, *West Lawrence Care Center, Inc.*, 305 NLRB 212 (1991) (A petitioned-for unit in a decertification election must be coextensive with the certified or recognized unit).

In *Kroger Co.*, 148 NLRB 569 (1964), the petitioner and employer sought to decertify the union at a chain of the employer's retail stores as a single-employer unit. The union argued that only a multiemployer unit was appropriate. There, the employer and other retail stores had bargained together with the union on a group basis for approximately 17 years when the dispute arose. The employer and other retail stores had no formal association, constitution, dues, fees, or binding rules of procedure, but one representative assumed the role of spokesperson for the entire group. *Id.* at 570-571. The petitioner argued that the bargaining history showed that the employer never delegated to the group the power to negotiate for it, had not manifested a desire

to be bound by group action, and that the existence of a multiemployer group was belied by the fact that some of the employers had negotiated individual contract adjustments over the years.

The Board disagreed with the petitioner and explained:

We have repeatedly held that a multiemployer unit is appropriate in circumstances such as are here present, even though the employer may not have specifically delegated to an employer group the authority to represent it in collective bargaining or given the employer group the power to execute final and binding agreements on its behalf, or where some of the contracts have not been signed by all members of the group. What is essential is that the employer member has indicated from the outset an intention to be bound in collective bargaining by group rather than by individual action.

Id. at 573. (Citations omitted).

In holding the single employer unit to be inappropriate, the Board also found significant the employer's failure to manifest any intent to withdraw from the group or give any clear indication that the group was not bargaining on behalf of the employer. *Id.* at 574.

More recently, in *Resort Nursing Home*, 340 NLRB 650 (2003) the Board adopted the administrative law judge's analysis on the following aspects of multiemployer bargaining units:

It should be noted that although multiemployer bargaining units generally take the form of membership associations, this is not a sine qua non for such a unit. It is not critical that there be a formal organization to which individual employers belong or pay dues. Whether an employer is or is not a member of an association is not controlling. What is controlling is whether the individual employers have each manifested unequivocally an intention to be bound by group bargaining rather than by individual action.

Id. at 654.

Here, there is no dispute that a formal membership association among the dump truck operators never existed. Nevertheless, as stated in *Resort Nursing Home*, such a membership association is not required to establish a multiemployer bargaining unit. Where employers have banded together only informally to bargain, the Board has "often inferred the presence of the requisite intention [to be bound by group action] from the facts that the employers have

participated for a meaningful period of time in joint bargaining negotiations and have adopted substantially uniform contracts resulting therefrom.” *Van Eerden*, 154 NLRB 496, 499 (1965). Such factors for such an inference are evidenced here.

First, the parties have negotiated six collective bargaining agreements in the fashion described above over the last 18 years, and thus have participated in joint bargaining for a meaningful period of time. Second, the 2013 to 2016 contract adopted by the operations is not only substantially uniform as a result of joint negotiations, but is also identical aside from the signature blocks. The previous five sets of agreements, from 1998 to 2013, were more than substantially uniform, as within each set they were identical to each other.

With those two criteria met, the ultimate question is the actual intent of the parties to bind themselves to each other for bargaining purposes. *Id.* at 499. Here, in addition to the meaningful period of time for joint bargaining sessions and the substantially uniform contract, for the past three agreements leading up to 2016, the dump truck operators designated a single spokesperson, Louis Tripi of AT&A Trucking, to represent them for the last three rounds of bargaining.⁸ The Employer participated in both the May 18 and June 9, 2016 group bargaining sessions, responded and seemingly supported the initial proposal and counter proposal offered by the employer group. It has never indicated that it wished to abandon group bargaining and continued to participate in group bargaining at the June 9 session even after Petitioner filed the instant petition. Accordingly, I find that the Employer through a pattern of behavior over many years and continuing until at least June 2016, manifested an intent to bind itself with the other dump truck operators for bargaining in a multiemployer bargaining unit and has never acted inconsistent with that intention. Finally, the Union’s use of general meetings at which the drivers

⁸ The operators did not appoint a spokesperson as of the May 18, 2016 session. The record does not indicate that they declined to appoint a spokesperson, but only that they did not designate anyone to replace Tripi after he passed away.

of all six employers formulate proposals prior to negotiations and ratify the contract through a pooled voting process are consistent with the existence of a multiemployer bargaining unit. Therefore, I find the single-employer bargaining unit sought by the petition is inappropriate and dismiss the petition.

III. CONCLUSIONS AND FINDINGS

Based on the entire record in this matter and in accordance with the discussion above, I find and conclude as follows:

1. The hearing officer's rulings are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction.
3. The Union is a labor organization within the meaning of Section 2(5) of the Act.
4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

IV. ORDER

It is hereby ordered that the petition is dismissed.

V. RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67(c) of the Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary of the National Labor Relations Board. The request for review must conform to the requirements of Section 102.67(d) and (e) of the Board's Rules and Regulations and must be filed by **July 11, 2016**.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

DATED the 27th day of June, 2016.

/s/Paul J. Murphy

PAUL J. MURPHY
ACTING REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 03
130 South Elmwood Avenue, Suite 630
Buffalo, New York 14202